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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 271 OF 2015
WITH
CIVIL APPLICATION NO. 599 OF 2015

Smt.Kausalya Baban Chavan ... Appellant

Vs.

Shivaji Bajirao Jadhav and others ... Respondents

Mr.Rajaram V.Bansode, Advocate for Appellant.

CORAM : R. G. KETKAR, J.

DATE : 16th APRIL, 2015

P.C. :

. Heard Mr.Rajaram V.Bansode, learned Counsel for the appellant at length.

2. By this appeal under section 100 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the original defendant has challenged the judgment and decree dated 04/04/2007 passed by the learned Civil Judge, Junior Division, Vaduj in Regular Civil Suit No. 222 of 2001 as also the judgment and decree dated 18/10/2014 passed by the learned District Judge-1, Vaduj in Regular Civil Appeal No. 257 of 2010. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as plaintiffs and declared that plaintiffs have ½ share in the disputed well, electric motor pump and underground pipeline (for short collectively

referred to as 'suit properties') with a right to fetch water for 3 days in a week i.e. from Monday to Wednesday, with further consequential relief of perpetual injunction restraining the appellant, hereinafter referred to as defendant, from obstructing the plaintiffs from fetching water from the disputed well and with mandatory injunction directing the defendant to connect the damaged pipeline at her costs, and in default, allowing the plaintiffs to get connected the damaged pipeline through Court at the costs of the defendant.

3. In support of this appeal, Mr.Bansode submitted that the Courts below have held that the well was dug by Bajirao Kondiba Jadhav, father of the plaintiffs 1 to 3 and the defendant in common by incurring expenses. The plaintiff's case is based upon agreement dated 20/11/1989 which is a forged and fabricated document. The said document is not a registered document. He submitted that the said document is also not duly proved by the plaintiffs. He relied upon the evidence of P.W.3-Vishnu Balwant Hattigote. The plaintiffs examined P.W.3 on the premise that he was a scribe to the said agreement. Mr.Bansode submitted that in cross examination, P.W.3 admitted that on 20/11/1989, he did not prepare agreement.

4. Mr.Bansode further submitted that plaintiffs examined Sahebrao Bajirao Jadhav (plaintiff No.2). In cross examination, he deposed that his father and Kausalya Chavan (defendant) decided to dig well by incurring expenses in December 1989. Mr.Bansode

submitted that in fact, the well was dug in September 1989 and agreement on which plaintiffs have instituted suit was purportedly entered on 20/11/1989 and not in the month of December 1989. He, therefore, submitted that agreement dated 20/11/1989 was not proved by the plaintiffs. He further submitted that it has come in cross examination of defendant that plaintiff represented that he is digging well in Gat No. 396 and in order to obtain electricity connection for well in that Gat number, he obtained thumb impression of the defendant on a blank stamp paper. Mr.Bansode, therefore, submitted that all the circumstances show that agreement was not proved by the plaintiffs as also the thumb impression of the defendant was obtained on a blank paper which was subsequently misused by the plaintiffs. Thus, the agreement is a forged and fabricated document. The Courts below committed error in decreeing the suit.

5. I have considered the submissions advanced by Mr.Bansode. I have also perused the material on record. The Courts below have considered the material on record and in particular complaint instituted by the defendant for offences punishable under sections 427 and 504 read with section 34 Indian Penal Code, 1860. The defendant had filed a private complaint in the Court of learned Judicial Magistrate, First Class, Vaduj being Criminal Case No. 181 of 1998. The defendant admitted about filing of that complaint in

person in the Court. The said complaint was drafted by her advocate as per her instructions. The learned District Judge reproduced paragraph 2 of that complaint wherein defendant herself asserted that Gat No. 728 belongs to her and in that land, complainant (defendant) and father of accused No. 1 to 3 (plaintiffs) – Bajirao Kondiba Jadhav had jointly dug the well 7 to 8 years back. After considering the assertions in the complaint, the learned District Judge recorded that the well in question was dug before 7 to 8 years of filing of the complaint in the year 1998 by incurring common expenses. She also asserted that it was agreed between defendant and Bajirao Kondiba Jadhav as to how well water in Gat No. 728 was to be drawn to their respective lands.

6. Not only that, the learned District Judge also considered the report of the Court Commissioner who had visited the suit well. The said aspect is to be found in paragraph 23 of the District Court's judgment. The learned District Judge has considered the report of the Court Commissioner in paragraph 24 and noted that the Court Commissioner had stated that Chamber C-4 i.e. at Point H-1 the exclusive pipeline of plaintiffs was attached to the common pipeline of plaintiffs and defendant. After considering the evidence on record, the learned District Judge ultimately held that the plaintiffs proved that suit well was dug by deceased Bajirao, father of plaintiffs No. 1 to 3 and defendant in common after incurring expenses to the

extent of ½ each. Even if the case of the defendant is accepted that scribe – P.W.3 examined by the plaintiffs has not proved the document, nonetheless, having regard to the other circumstances on record namely, filing of the complaint by the defendant herself as also report of the Court Commissioner along with his evidence, I do not find that the Courts below committed any error in decreeing the suit as indicated earlier. In the written statement, defendant did not plead that her signature was obtained on a blank stamp paper. That apart, the portion of the cross examination of defendant relied by Mr.Bansode is voluntarily deposed by the defendant. After considering the material on record, it cannot be said that the findings recorded by the Courts below are perverse being based upon no evidence or that they are contrary to the evidence on record.

7. In view thereof, no substantial question of law arises in this appeal. Hence, appeal fails and the same is dismissed. In view of dismissal of the appeal, Civil Application No. 599 of 2015 for stay does not survive and the same is disposed of accordingly.

(R. G. KETKAR, J.)